

MONTANA LEGISLATIVE HISTORY

Chapter 475 1991

Bill H 353 S _____ Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) h 2/01 _____ c

✓ 2/02 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) h 3/26 _____ c

✓ 4/01 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1991

HOUSE FINAL STATUS

HB 354

2/23	2ND READING PASSED	57	40
2/26	3RD READING PASSED	62	37
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/18	HEARING		
3/23	COMMITTEE REPORT—BILL NOT PASSED		
3/23	ADVERSE COMMITTEE REPORT ADOPTED	32	15

HB 352 INTRODUCED BY RANEY, ET AL.

ALLOW SNOWMOBILE ACCOUNT FUNDS TO BE USED
TO MINIMIZE ENVIRONMENTAL EFFECTS

1/22	INTRODUCED
1/22	REFERRED TO HIGHWAYS & TRANSPORTATION
1/23	FIRST READING
2/12	HEARING
2/21	TABLED IN COMMITTEE

HB 353 INTRODUCED BY STRIZICH, ET AL.

SUBMIT CONSTITUTIONAL AMENDMENT TO THE
PEOPLE TO CLARIFY JUDICIAL SELECTION
BY REQUEST OF SECRETARY OF STATE

1/22	INTRODUCED		
1/22	REFERRED TO JUDICIARY		
1/23	FIRST READING		
2/01	HEARING		
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	2ND READING PASSED AS AMENDED	96	1
2/08	3RD READING PASSED	95	1
	TRANSMITTED TO SENATE		
2/09	FIRST READING		
2/09	REFERRED TO JUDICIARY		
3/26	HEARING		
4/01	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	49	0
4/05	3RD READING CONCURRED	48	2
4/12	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
	(BILL PROPOSING CONSTITUTIONAL AMENDMENT DOES NOT REQUIRE GOVERNOR'S SIGNATURE)		
	CHAPTER NUMBER 475		
	EFFECTIVE DATE: 10/01/91		

HB 354 INTRODUCED BY SCHYE

ALLOW COUNTY COMMISSIONERS TO LEVY
UP TO 2 MILLS FOR FIRE CONTROL

1/22	INTRODUCED		
1/22	REFERRED TO LOCAL GOVERNMENT		
1/23	FIRST READING		
2/12	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/02	2ND READING PASSED AS AMENDED	60	40
4/04	3RD READING PASSED	56	44
	TRANSMITTED TO SENATE		
4/04	FIRST READING		
4/04	REFERRED TO LOCAL GOVERNMENT		
4/09	HEARING		
4/10	COMMITTEE REPORT—BILL CONCURRED		
4/15	2ND READING CONCURRED	48	0
4/16	3RD READING CONCURRED	46	3

RETURNED TO HOUSE

CONSTITUTIONAL AMENDMENT

1 *House* BILL NO. *353*
 2 INTRODUCED BY *Blaylock Whalen*
 3 *Rife* BY REQUEST OF THE SECRETARY OF STATE *Thayer*
 4 *Bob Brown*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
 6 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII,
 7 SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE
 8 THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES
 9 AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION,
 10 CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS
 11 PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Article VII, section 8, of The Constitution
 15 of the State of Montana is amended to read:

16 "Section 8. Selection. (1) Supreme court justices and
 17 district court judges shall be elected by the qualified
 18 electors at a general election as provided by law.

19 (2) The For any vacancy in the office of supreme court
 20 justice or district court judge, the governor shall nominate
 21 appoint a replacement from nominees selected in the manner
 22 provided by law for any vacancy in the office of supreme
 23 court justice or district court judge. If the governor fails
 24 to nominate appoint within thirty days after receipt of
 25 nominees, the chief justice or acting chief justice shall

1 make the nomination appointment from the same nominees
 2 within thirty days of the governor's failure to appoint.
 3 Appointments made under this subsection may be subject to
 4 confirmation by the senate, as provided by law. Each
 5 nomination--shall--be--confirmed--by--the--senate,---but---a
 6 nomination--made--while--the--senate--is--not--in--session--shall--be
 7 effective--as--an--appointment--until--the--end--of--the--next
 8 session,---if--the--nomination--is--not--confirmed,--the--office
 9 shall--be--vacant--and--another--selection--and--nomination--shall
 10 be--made.

11 {2}--if,---at---the---first---election---after---senate
 12 confirmation,--and--at--the--election--before--each--succeeding
 13 term--of--office,--any--candidate--other--than--the--incumbent
 14 justice--or--district--judge--files--for--election--to--that--office,
 15 the--name--of--the--incumbent--shall--be--placed--on--the--ballot,---if
 16 there--is--no--election--contest--for--the--office,--the--name--of--the
 17 incumbent--shall--nevertheless--be--placed--on--the--general
 18 election--ballot--to--allow--voters--of--the--state--or--district--to
 19 approve--or--reject--him,--if--an--incumbent--is--rejected,--another
 20 selection--and--nomination--shall--be--made.

21 {3}--if--an--incumbent--does--not--run,--there--shall--be--an
 22 election--for--the--office."

23 NEW SECTION. **Section 2.** Effective date. This amendment
 24 is effective on approval by the electorate.

25 NEW SECTION. **Section 3.** Submission to electorate. This

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 1, 1991,
at 7:39 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 289

Motion: REP. BROWN MOVED HB 289 DO PASS.

Discussion: REP. MEASURE felt the committee should not raise the
filing fee to \$100 because most couples wanting an uncontested
divorce are very young and probably made a rash decision to get
married in the first place. REP. MEASURE stated that easy
divorces shouldn't be discouraged by adding an extra \$40 to the
filing fee just for uniformity.

Motion/Vote: REP. MEASURE moved to amend HB 289 by retaining the
fee of \$60. Motion carried.

REP. KELLER asked Mr. Sherwood if he could tell the committee how many cases have come up in the past related to this particular subject? Mr. Sherwood stated that there are no Supreme Court cases in which this is reviewed. He did find a case on outfitter liability, in which there was a fall from a horse and that case has not been resolved.

Closing by Sponsor:

REP. GRADY stated that he does not agree with Mr. Sherwood that outfitter businesses cannot compare with mainstream businesses. There needs to be separate liability laws for separate activities. Montana is a very variable state with many different recreational activities. This bill does not state that an individual does not have to be careful. REP. GRADY stated he would be willing to sit with a sub-committee and felt a sub-committee was a good idea.

HEARING ON HB 353
SUBMIT CONSTITUTIONAL AMEND. TO THE PEOPLE
TO CLARIFY JUDICIAL SELECTION

35
p 5

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated that HB 353 is presented on behalf of the Secretary of State, Mike Cooney. It closes a loophole in the election and appointment of judges. It is a proposed constitutional amendment effecting article 7, section 8 of the constitution. The intent is to protect the voter's right to vote for Supreme Court and District Court judges. The bill has a provision that places before the voter the ability to elect an appointed position in any of our courts in a more expeditious fashion and guarantees that each judicial appointment filling a vacancy will be required to face an election as soon as practical. Currently, the judge or justice appointed whose term is expired before the legislature convenes and receives Senate confirmation, the judge is then exempted from the electoral process for an additional couple of years. This means people can be kept from voting on a particular judicial position for quite a length of time.

Proponents' Testimony:

Mike Cooney, Secretary of State, gave written testimony in favor of HB 353. EXHIBIT 7

John McCarthy, Lobbyist - Common Cause in Montana, gave written testimony in favor of HB 353. EXHIBIT 8

Jerry O'Neil, Vocal of Montana, stated that he is in support of this bill and urges a do pass.

Chester Kinsey, Montana Senior Citizens Association, stated that

the Senior Citizens Association are in support of HB 353.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. STRIZICH stated that the bill clarifies the appointment and election process. It goes further and insures integrity and consistency in the terms of office in the Montana Judicial Branch of Government. It will protect a fundamental right of Montana citizens to vote and choose Judicial Branch officials. Rep. Strizich said, "I hope you will support this bill, as it is very important."

HEARING ON HB 212
FREEDOM OF EXPRESSION FOR STUDENTS

Presentation and Opening Statement by Sponsor:

REP. COHEN, HOUSE DISTRICT 3, stated that this bill provides for Freedom of Expression for the students. Rep. Cohen asked, "Isn't this right enumerated in the U.S. Constitution? The Montana Constitution, the document the Legislature pledges to uphold and serve, states in article 2, The Declaration of Rights, section 7, says Freedom of Speech Expression and Press: no law shall be passed barring the freedom of speech or expression. Every person shall be free to speak and publish whatever he will on any subject being responsible for all breach of that liberty."

Proponents' Testimony:

Ben Darrow, student - Whitefish High School, gave written testimony in favor of HB 212. EXHIBIT 9

Eileen Sheehy, Journalism Teacher - Billings High School, stated that as a teacher she considers herself a professional. She said she was a pro in the classroom and when she doesn't know answers to legal questions she calls a lawyer. Ms. Sheehy said, "I am in a better position to know about liable law than the Administrator who is mainly interested in keeping a lid on things in the school." Ms. Sheehy said another point she would speak about is the first amendment, the constitution, and what we are teaching our students. Students are learning about Government when Government butts up against them. The most valuable lesson about Government is when they realize the first amendment is an amendment which protects the innocent or the weak against the proud and strong - the majority. When Freedom is applied to a newspaper class, where is it vitally needed, it is gone. Ms. Sheehy said, "We are teaching students that the weak in our society is not protected by the first amendment. Students are a

Testimony of Secretary of State Mike Cooney
In Support of House Bill 353
February 1, 1991
House Judiciary Committee

Mr. Chairman and members of the Committee, for the record my name is Mike Cooney and it is my privilege to appear before you today in support of House Bill 353.

In November of 1989, I announced publicly that I would be coming to this body with a proposal to close a loophole in our state's constitution. The loophole is simple...it is dangerous...and it's time for us to shut it down. Current constitutional interpretation as expressed just last May by the Supreme Court allows judges and justices appointed by the Governor to be exempt from the electoral process until after confirmation by the Senate.

- L
I want to take just a moment to give you a visual example of exactly what this means. This chart was developed in 1989 and has been well used in both district court and the Supreme Court, and it does a pretty good job of helping to clarify what can be a somewhat confusing matter.

The chart illustrates the pitfalls that exist under the status quo using the election of Supreme Court Justices as an example.

The first illustration shows the standard, constitutionally mandated schedule for the election of Supreme Court Justices.

The term of office for each Justice is eight years, and two justices are up for election at each even year general election. Under the standard schedule, using 1982 as a base year, Justice Position Number 1 would be elected, and would stand for re-election eight years later in 1990.

Example two illustrates the actual situation we found ourselves in 1989. When Justice Barz was appointed to the court in 1989, the Senate had already adjourned, so confirmation was impossible. Therefore, the term to which she was appointed was extended to 10 years, and the 1990 election for Supreme Court Justice Position Number One was canceled. The seat will be up for election in 1992, but the winner will serve a shortened term of only six years, and will be up for re-election in 1998.

Some will argue that the third illustration shown here is far fetched. I disagree. This illustration shows that through the use of scheduled appointments, both the legislative confirmation process and the electoral system can be completely circumvented. Appointments in 1989, 1991, 1993 and 1995 would effectively turn a simple eight year term on the Supreme Court into a sixteen year period during which time the voters of this state were denied their right to choose whom we wish to serve us on the Supreme Court.

Clearly, this last example is a hypothetical situation that is

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HB 353

unlikely to occur. But it is possible...and right now, it is perfectly legal. But in 1990 the effect on the Montana voter was far from hypothetical.

In 1990, every voter in this state was denied the right to vote for their candidate of choice for a Supreme Court seat. In addition voters in two district court elections were given no choice because these seats were held by recent appointees. This is wrong, and it must stop.

When I became Secretary of State in 1989, I took a solemn oath to protect the Constitutional rights of every Montanan. Certainly, one of our most cherished rights here in Montana and throughout America is the right to vote. House Bill 353 will strengthen our Constitution and it will affirm the right of all Montanans to vote for those who govern our state.

In drafting this bill, I have tried to remain focused on the purpose of the measure...namely to amend the constitution to mandate the election of judges and justices at the times prescribed by law. The introduced copy of the bill you have before you would have eliminated much of the language regarding senate confirmation, the appointment process and the ballot form to be used in Judicial elections. Over the past week, through a series of discussions with members of the Supreme Court, members of the legislature, and other interested parties, it has been

EX. 1
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suggested that language regarding the confirmation process and the ballot form should be retained. I agree with these changes and believe that they will further assist in clarifying the election and appointment process.

Copies of the amended language have been distributed, and I would encourage the committee review the amended language and to give favorable consideration to the amendments, and to House Bill 353.

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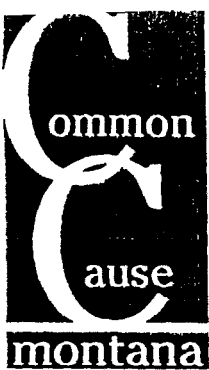


EXHIBIT 8
DATE 2-1-91
HB 353

TESTIMONY OF COMMON CAUSE/MONTANA

IN SUPPORT OF HOUSE BILL 353

1 February 1991

P.O. Box 623
Helena, MT
59624
406/442-9251

Mr. Chairman and members of House Judiciary Committee for the record my name is John McCarthy lobbyist for Common Cause in Montana. Common Cause/Montana represents Montanans who want open, accessible and democratic government in Montana.

On behalf of the members of the organization we would like to go on record in support of House Bill 353.

We support HB 353 because it closes an appointment loophole. It is important that if we as a state are going to have elected judges that they face the voters. This means an appointed judge must face the voters at the general election when the term for the appointment runs out. Such an election is the democratic thing to do. It is for this very simple reason we ask your endorsement of HB 353.

Proposed Amendments
House Bill 353

Section 1. Article VII, section 8, of The Constitution of the State of Montana is amended to read:

"Selection 8. Selection. (1) Supreme court justices and district court judges shall be elected by the qualified electors at the general election as provided by law.

(2) The For any vacancy in the office of supreme court justice or district court judge, the governor shall ~~nominate~~ appoint a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to ~~nominate~~ appoint within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination appointment from the same nominees within thirty days of the governors failure to appoint. Appointments made under this subsection may shall be subject to confirmation by the senate as provided by law. If the appointee is not confirmed, the office shall be vacant and a replacement shall be made by the procedures in this section. The appointee shall serve until the expiration of the term of his predecessor. No appointee, whether confirmed or unconfirmed, may serve past the term of his predecessor without standing for election. Each nomination shall be confirmed by the senate, but the nomination made while the senate is not in session shall be effective as an appointment until the end of the next session, If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) (3) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made. the vacancy of the of the office for which the election was held shall be filled as provided in subsection (2).

(3) If an incumbent does not run, there shall be an election for the office."

NOTE: Sections 2 and 3 remain unchanged from HB 353 as Introduced.

#2

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 2, 1991,
at 9:42 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB #333

Motion: REP. BROOKE MOVED HB 333 DO PASS. Motion passed with
Rep's: Clark and Boharski voting no.

EXECUTIVE ACTION ON HB #286

Motion: REP. MESSMORE MOVED HB 286 DO PASS. Motion passed

unanimously.

EXECUTIVE ACTION ON HB #353

Motion: REP. BROWN MOVED HB 353 DO PASS.

Motion: REP. BROWN moved to amend HB 353 with the amendments proposed by John Connor. EXHIBIT 1 Motion carried unanimously.

Motion/Vote: REP. BROWN MOVED HB 353 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 212

Motion: REP. WYATT MOVED HB 212 DO PASS.

Motion: REP. DARKO moved to amend HB 212 with the amendments proposed by REP. COHEN. EXHIBIT 2

Discussion: REP. DARKO stated she felt this bill ties the hands of the people who are responsible for the children in there schools.

REP. COHEN stated the committee should take the amendments one at a time and consider each of them separately.

REP. BROWN stated we want to be careful not to go beyond the limits currently imposed mostly by case law on journalistic activities. It seems to me, sub 2 and all the lines on page 2, put in place what is case law that applies to journalist and you probably to leave it all in the bill.

REP. RICE stated if we add the amendment to section 2 you have only left the intended statute referenced here. I do not think this a prohibition in any way of the students producing this information, we need specific exceptions to that. As you are proposing to amend the bill, the students can do anything in subsection 1 except as limited in subsection 2. The amendment fully guts subsection 2.

REP. WHALEN stated he agrees with Rep. Rice. This bill can be fixed easily by leaving the language on page 2 and I think it is wrong to take those sections out. It sends a message to students that they don't have to be concerned about liable and slander. I think the school board will have a right to review the material and approve anything printed, they should be liable. We should amend subsection 3 saying if the school board gave them the authority that they are liable.

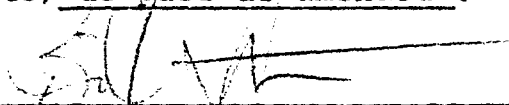
REP. MEASURE stated his concern is about the amendment to section

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 353 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, line 3.

Strike: "may"

Insert: "shall"

2. Page 2, line 22.

Following: "~~office.~~"

Insert: "If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the next general election and until a successor is elected and qualified. The person elected or retained at that general election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2)."

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 26, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that he would defer action on HB 797 and HJR 9 until April 1 or 2, 1990. He asked Senator Towe where he got the complaints he read from at the HB 797 hearing. Senator Towe replied that he received the complaints in an envelope from Pat Smith, Tribal Attorney.

HEARING ON HOUSE BILL 353

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, said HB 353 was requested by the Secretary of State, to close a loophole in the election of judges. He explained that the bill would amend Article 7 of the Montana Constitution, and provides the right to the voters of the State to elect appointed positions as soon as possible. Representative Strizich advised the Committee that if a judge or a justice is appointed to a term which does not expire before the Legislature meets to approve it, that appointment will remain until the next Legislative Session. He explained that current statute was based on anticipation of annual legislative sessions as per the 1972 Constitutional revisions.

Proponents' Testimony:

Mike Cooney, Secretary of State, told the Committee that, in November 1989 he publicly announced his intent to change this legislation. He said he believes this loophole is dangerous, as appointed judges are exempt from the electoral process until the next Legislative Session. He provided a flow chart, developed in 1989 for the District and Supreme Courts, and said that, using 1982 as a base year, Justice Barr (appointed in 1989) would have remained as an appointment for 10 years. He explained that a justice could, theoretically, turn an 8-year term into a 16-year term.

Mr. Cooney further advised the Committee that the voters were denied the right to vote for the candidate of their choice in 1990. He said he believes the bill will strengthen the Montana Constitution, and that Senator Blaylock agreed to carry the bill. Mr. Cooney thanked Representative Strizich for sponsoring the bill.

John McCarthy, Common Cause in Montana, read from a prepared statement in support of the bill. He said he believes judges should face election.

Chester Kinsey, Montana Senior Citizens Association, stated his support of HB 353.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Crippen asked the Secretary of State if he were implying that the appointment of Judge Barrs was done by design. Mr. Cooney replied, "Absolutely not." He said someone could craft timed appointments under current law.

Senator Crippen asked if the Secretary of State had spoken with Judge Colberg. Mr. Cooney replied he had, and said he has also spoken with the Bozeman District Judge, but, again, was not implying their situation was an attempt to circumvent the process. He explained that the Helena District Court ruled that appointed judges would stand for election, and that the Supreme Court disagreed. Mr. Cooney said everyone agrees that something needs to be done, including the Chief Justice.

Senator Crippen said he wanted this in the record, as Judge Colberg planned to run, and was dismayed by the ruling of the Supreme Court. Mr. Cooney apologized if any of his comments gave that impression, and said that was not his intent.

Senator Towe asked about the change in making appointments. Mike Cooney replied that "appoint" replaces "nominate", as that is what the Governor is doing.

Senator Towe asked if that is too short a time period. Mike Cooney replied that it doesn't seem to be, since the Governor has made several appointments within 30-day periods.

Senator Towe asked about the language, "until election of predecessor". Mike Cooney stated that the Committee would need to read the entire section, beginning on page 2, line 23. He said this language corrects the problem the State is in.

Senator Towe asked what "until elected as provided by law" means. Mike Cooney replied it was a concern of the Chief Justice to give the Legislature some flexibility in dealing with this situation.

Senator Towe asked the Secretary of State if he were willing to allow the Legislature to make this decision. Mr. Cooney replied he was.

Senator Towe asked if once a judge is appointed, he or she serves until the next election. He asked how the Justice Barrs situation could be corrected, since her position is out of synchronization with the process. Mr. Cooney replied that if Justice Gray chooses to run, it would be for a shortened term to bring that position into synchronization. He said Justice Barrs replaced Justice Gulbranson, and didn't have to stand for election in 1990. Mr. Cooney further stated that in 1992 three candidates will run for three seats on the Supreme Court, and two will run for eight-year terms. He explained that one of these eight-year terms, that of Justice Gray, will actually be a six-year term. He said this would prevent the problem from recurring.

Senator Mazurek said he had no concerns with what the bill does substantively, but had concerns with the terms of the justices. He asked the Secretary of State if he is willing to discuss page 2, line 23. Senator Mazurek stated that this language, "sort of assume confirmation". He asked if "assuming confirmation is made" could be segregated out, and be put into a new area. Mr. Cooney replied he would be glad to discuss the matter with Senator Mazurek.

Closing by Sponsor:

Representative Strizich stated that all parties affected were actively involved in the evolution of this bill. He said the bill would ensure the integrity and consistency of terms, and provide for the right of voters to review and elect appointments.

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HB 353
3-26-91

Testimony of Secretary of State Mike Cooney
In Support of House Bill 353
March 26, 1991
Senate Judiciary Committee

Mr. Chairman and members of the Committee, for the record my name is Mike Cooney and it is my privilege to appear before you today in support of House Bill 353.

In November of 1989, I announced publicly that I would be coming to this body with a proposal to close a loophole in our state's constitution.

The loophole is simple it is dangerous, and it's time for us to shut it down. Current constitutional interpretation as expressed just last May by the Supreme Court allows judges and justices appointed by the Governor to be exempt from the electoral process until after confirmation by the Senate.

I want to take just a moment to give you a visual example of exactly what this means. This chart was developed in 1989 and has been well used in both district court and the Supreme Court, and it does a pretty good job of helping to clarify what can be a somewhat confusing matter.

The chart illustrates the pitfalls that exist under the status quo using the election of Supreme Court Justices as an example.

The first illustration shows the standard, constitutionally mandated schedule for the election of Supreme Court Justices. The term of office for each Justice is eight years, and two justices are up for election at each even year general election. Under the standard schedule, using 1982 as a base year, Justice Position Number 1 would be elected, and would stand for re-election eight years later in 1990.

Example two illustrates the actual situation we found ourselves in 1989. When Justice Barz was appointed to the court in 1989, the Senate had already adjourned, so confirmation was impossible. Therefore, the term to which she was appointed was extended to 10 years, and the 1990 election for Supreme Court Justice Position Number One was canceled.

The seat will be up for election in 1992, but the winner will serve a shortened term of only six years, and will be up for re-election in 1998.

Some will argue that the third illustration shown here is far fetched. I disagree. This illustration shows that through the use of scheduled appointments, both the legislative confirmation process and the electoral system can be completely circumvented. Appointments in 1989, 1991, 1993 and 1995 would effectively turn a simple eight year term on the Supreme Court into a sixteen year period when the executive branch hand picked at least one member

of the Supreme Court.

Clearly, this last example is a hypothetical situation that is unlikely to occur. But it is possible...and right now, it is perfectly legal. But in 1990 the effect on the Montana voter was far from hypothetical.

In 1990, every voter in this state was denied the right to vote for their candidate of choice for a Supreme Court seat. In addition voters in two district court elections were given no choice in that judicial seat either because the seats were held by recent appointees. This is wrong, and it must stop.

When I became Secretary of State in 1989, I took a solemn oath to protect the Constitutional rights of every Montanan. Certainly, one of our most cherished rights here in Montana and throughout America is the right to vote. House Bill 353 will strengthen our Constitution and it will affirm the right of all Montanans to vote for those who govern our state.

The bill you have before you today is a product of significant efforts by members of the Supreme Court, members of the Legislature, and other interested parties to craft language that will clarify the process of appointment, confirmation and election of judges and justices. I am proud to have been a part of this process and I would like to thank Representative Strizich and Senator Blalock for agreeing to carry this important measure.

I appreciate your time and consideration, and would ask that you give House Bill 353 a do concur recommendation.

DM: 87.131

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on April 1, 1991, at 10:25 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: David Rye (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator Mazurek announced that the Subcommittee would need to meet to discuss SB 427 before executive action could be taken on the bill.

EXECUTIVE ACTION ON HOUSE BILL 668

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane advised the Committee that SB 398 allows community service, but would be changed by HB 668, and that the coordination instruction allows community service in both bills for under 18 and over 18 age groups (Exhibit #1).

Senator Towe made a motion that the coordination instructions be approved. The motion carried unanimously.

Senator Towe made a motion to amend the bill to its original state. The motion carried 9-2 in a roll call vote (attached).

Senator Mazurek stated that the local governments want flexibility in expending these dollars, instead of having them go to the Department of Justice.

Senator Harp asked how unincorporated areas would be affected. Chairman Pinsoneault replied that would not change. Senator Mazurek stated the dollars will still go to the general fund, even with Representative Brown's amendments.

Recommendation and Vote:

Senator Towe made a motion that HB 494 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 501

Motion:

Senator Mazurek made a motion that HB 501 BE TABLED.

Discussion:

There was no discussion on the motion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 353

Motion:

Senator Mazurek made a motion that HB 353 BE CONCURRED IN. He said the Secretary of State advised him that this language was closely worked out.

Discussion:

There was no discussion on the motion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously. Senator Mazurek was asked to carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 503

Motion:

Senator Crippen made a motion that HB 503 BE TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

Senator Mazurek asked that the Committee pass on HB 503 for the day, as it is being discussed by his Subcommittee in conjunction with SB 427. Senator Crippen withdrew his motion and no action was taken this date.

EXECUTIVE ACTION ON HOUSE BILL 887

Motion:

Discussion:

Senator Mazurek said he would like to see the Committee draft a letter to the Chief Justice to make discovery limitations, since it is a problem.

Senator Towe proposed, as a second option, that the Committee make the request to the Supreme Court, but also pass the bill as a first option. He said Title 27 of the Code has an enormous amount of rules addressing procedural rules of the courts, and that he believes this would be a stronger message.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

Senator Towe made a motion that HB 887 BE CONCURRED IN. The motion failed 4-6 in a roll call vote (attached).

ROLL CALL

SENATE JUDICIARY

COMMITTEE

~~52nd~~ LEGISLATIVE SESSION -- 1999

Date April 14

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	1		
Sen. Yellowtail	1		
Sen. Brown	1		
Sen. Crippen	1		
Sen. Doherty	1		
Sen. Grosfield	1		
Sen. Halligan	1		
Sen. Harp	1		
Sen. Mazurek	1		
Sen. Rye	1		
Sen. Svrcek	1		
Sen. Towe	1		

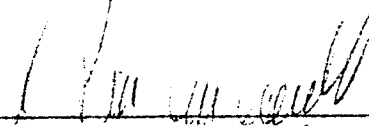
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 1, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 353 (third reading copy as amended -- blue), respectfully report that House Bill No. 353 be concurred in.

Signed: 
Richard P. Poirer, Chairman

4-1-91
Coord.

4-1 2:00
of Senate

HOUSE BILL NO. 353

INTRODUCED BY STRIZICH, BLAYLOCK, WHALEN, DOHERTY,

O'KEEFE, NISBET, HARPER, B. BROWN, MAZUREK

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION, CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article VII, section 8, of The Constitution of the State of Montana is amended to read:

"Section 8. Selection. (1) Supreme court justices and district court judges shall be elected by the qualified electors at a general election as provided by law.

(2) The For any vacancy in the office of supreme court justice or district court judge, the governor shall nominate appoint a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate appoint within thirty days after receipt of

nominees, the chief justice or acting chief justice shall make the nomination appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection may SHALL be subject to confirmation by the senate, as provided by law. Each nomination--shall--be--confirmed--by--the--senate,---but---a nomination--made--while--the--senate--is--not--in--session--shall--be effective--as--an--appointment--until--the--end--of--the--next session,---if--the--nomination--is--not--confirmed,--the--office shall--be--vacant--and--another--selection--and--nomination--shall be--made.

{2}--if,---at---the---first---election---after---senate confirmation,--and--at--the--election--before--each--succeeding term--of--office,---any--candidate--other--than--the--incumbent justice--or--district--judge--files--for--election--to--that--office, the--name--of--the--incumbent--shall--be--placed--on--the--ballot,---if there--is--no--election--contest--for--the--office,--the--name--of--the incumbent--shall--nevertheless--be--placed--on--the--general election--ballot--to--allow--voters--of--the--state--or--district--to approve--or--reject--him,--if--an--incumbent--is--rejected,--another selection--and--nomination--shall--be--made.

{3}--if--an--incumbent--does--not--run,--there--shall--be--an election--for--the--office. IF THE APPOINTEE IS NOT CONFIRMED, THE OFFICE SHALL BE VACANT AND A REPLACEMENT SHALL BE MADE UNDER THE PROCEDURES PROVIDED FOR IN THIS SECTION. THE